IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WEALTH TAX REFERENCE No 14 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF WEALTH-TAX

Versus

J. K. SITWALA

Appearance:

MR BB NAIK for MR MANISH R BHATT for Applicant

SERVED BY RPAD - (N) for Opponent

CORAM : MR.JUSTICE B.C.PATEL
and
MR.JUSTICE D.A.MEHTA

Date of decision: 04/12/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE D.A.MEHTA)

#. Income-Tax Appellate Tribunal, Ahmedabad Bench `A' has referred the following two questions at the instance of the Commissioner of Wealth Tax.

"1. Whether, all the three flats can be regarded as "house" under the provisions of section 5(1)(iv) of the Wealth-tax Act, 1957 and the exemption should be made available to the assessee by aggregation of the value of all the three flats?

2. Whether, in view of the facts and circumstances of the case and the language of section 5(1)(iv) of the Wealth-tax Act, 1957, to value of three flats is required to be aggregated for the purpose of granting exemption to the assessee for "house"?"

#. The assessee individual owned three flats in the same building and contending that they constituted ` a house' claimed exemption under Section 5(1)(iv) of the Wealth-tax Act, 1957 (hereinafter to be referred to as "the Act"). The exemption provided under Section 5 (1)(iv) of the Act at the relevant point of time was limited to the ceiling of Rs. 1.00 lac. The Wealth-tax Officer granted exemption in relation to only one flat while denying benefit in relation to other two flats and hence the assessee was granted exemption only to the tune of Rs. 62,000/=. Being aggrieved, the assessee carried the matter in appeal, but as the appeal was dismissed, the assessee was required to file Second Appeal before the Tribunal.

#. The Tribunal held that as Clause (iv) of Section 5(1) of the Act uses the word `house', while Clause (iv-c) of Section 5(1) of the Act uses the words `dwelling unit' both the expressions have to be considered separately and given separate meanings; that the Wealth-tax Officer and the appellate authority had read both the terms to be synonymous and committed error in denying the exemption claimed. Applying the ratio of Allahabad High Court judgment in the case of Shiv Narain Chaudhari v. Commissioner of Wealth Tax, Lucknow [1977 108 ITR 104], the Tribunal held that the assessee was entitled to the exemption claimed under Section 5(1)(iv) of the Act after aggregating the value of the flats and treating the same as a house.

#. We have heard Mr. B.B. Naik, learned counsel appearing for the Revenue. Though served, none appears on behalf of the respondent - assessee.

#. Allahabad High Court in the case of Shiv Narain Chaudhari (supra) has held as under.

> "If a building otherwise comes within the meaning of the word `house' the mere fact that different members of the HUF who own that building are living separately in different self-contained portions thereof, will not, in our opinion, constitute that building into many houses."

This decision came to be followed by the Kerala High Court in the case of Commissioner of Wealth Tax v. Nazima Nizar [197 ITR 258] wherein it is laid down as under.

> "Several self-contained units which are contiguous and situate in the same compound and with common boundaries and having unity of structure could be regarded as one building. The exemption under section 5(1)(iv) of the Wealth-tax Act, 1957, would be available in respect of the value of the entire building, subject to the limitation prescribed under section 5(1)(iv) of the Act."

#. In light of consistent ratio of the different High Courts, it cannot be said that there is any infirmity in the order of the Tribunal which calls for interference by this Court. Section 5(1)(iv) of the Act grants exemption to assessee in respect of the value of one house. `A house' is not defined under the Wealth-tax Act and has to be understood, therefore, by adopting meaning as understood in common parlance. In the present case, the Tribunal has correctly distinguished between the terms `dwelling unit' and `a house'.

#. In view of what is stated hereinbefore, the questions referred to us are answered in the affirmative i.e. in favour of the assessee and against the Revenue. The Reference stands disposed of accordingly with no order as to costs.

[B.C. PATEL, J.] [D.A. MEHTA, J.]

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